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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

PAUL MANKIN, individually and on ) Case No. 2:13-cv-06447-DSF (AGRx)  
behalf of all others similar situated, )

Plaintiff, )

vs. )

MOUNTAIN WEST RESEARCH )  
CENTER, L.C., and DOES 1 through )  
10, inclusive, and each of them, )

Defendants. )

**CLASS ACTION**

**ORDER PRELIMINARILY  
APPROVING CLASS ACTION  
SETTLEMENT AND  
CERTIFYING SETTLEMENT  
CLASS**

1 Plaintiff's motion for preliminary approval of a class action settlement  
2 and certification of a settlement class came on for hearing on Monday,  
3 September 8, 2014 at 1:30 p.m. before this Court. The Court, having  
4 considered the motion and the Parties' proposed settlement, grants Plaintiff's  
5 motion as follows:

6 1. The Court has reviewed the terms of the Parties' Agreement and  
7 preliminarily finds that the Agreement appears sufficiently fair, reasonable, and  
8 adequate to warrant dissemination of class notice of the proposed settlement and  
9 scheduling a formal fairness hearing. The Court finds that the Agreement  
10 contains no obvious deficiencies and that the Parties entered into the settlement  
11 in good faith, following arm's length negotiations between their respective  
12 counsel. The Court adopts the definitions set forth in the Agreement and all  
13 defined words or phrases used in this Order shall have the same meaning as in  
14 the Agreement.

15 2. The Court certifies the following class for settlement purposes only  
16 pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure:

17 *All mobile subscribers who were called by Mountain West Research*  
18 *Center on their mobile phones to 15,703 unique mobile numbers in*  
19 *connection with the Survey Campaigns for campaigns on May 18 to*  
20 *May 20, 2013 and July 22 to 24, 2013.*

21 Excluded from the Settlement Class is Defendant and its subsidiaries and  
22 affiliates, employees, officers, directors, agents and representatives and its family  
23 members; Class Counsel; all judicial officers who have presided over the  
24 Lawsuit; and all persons who timely elect to become Opt-Outs from the  
25 Settlement Class in accordance with this Order.

26 3. The Court finds that, for the purpose of settlement only, the  
27 requirements of Rule 23 of the Federal Rules of Civil Procedure are met by the  
28 class. Joinder of all class members in a single proceeding would be

1 impracticable, if not impossible, because of their numbers and dispersion.  
2 Common issues exist among class members and predominate over questions  
3 affecting individual class members. Plaintiff's claims are typical of those of the  
4 Settlement Class. Plaintiff and his counsel will fairly and adequately protect the  
5 interests of the Settlement Class. Plaintiff has no interest antagonistic to those of  
6 the Settlement Class and has retained counsel experienced and competent to  
7 prosecute this matter on behalf of the class. Finally, a class settlement is superior  
8 to other available methods for a fair resolution of the controversy.

9         4. For purposes of settlement, the Court appoints Named Plaintiff Paul  
10 Mankin to serve as class representative. Further, pursuant to Rule 23(g)(1) of the  
11 Federal Rules of Civil Procedure, the Court appoints John Kristensen and David  
12 Weisberg of Kristensen Weisberg, LLP to serve as Class Counsel.

13         5. Pursuant to Rule 23(c)(2)(B) and Rule 23(e) of the Federal Rules of  
14 Civil Procedure, the Court orders that the Settlement Class be given notice of the  
15 pendency of this action and the Parties' proposed settlement. The Court finds  
16 that the Class Notice dissemination procedure set forth in Section VI of the  
17 Agreement (i) is the best practicable notice; (ii) is reasonably calculated, under  
18 the circumstances, to apprise Settlement Class Members of the pendency of the  
19 Lawsuit and of their right to object or to exclude themselves from the proposed  
20 settlement; (iii) is reasonable and constitutes due, adequate and sufficient notice  
21 to all persons entitled to receive notice; and (iv) meets all applicable  
22 requirements as set forth by law. Thus, the Court adopts and incorporates the  
23 Class Notice dissemination procedures set forth in Section VI of the Agreement  
24 into this Order.

25         6. The Court approves the Class Notice, Long Form Class Notice, and  
26 Opt-Out Form, which have been revised in accordance with the Court's orders.  
27 The Court also approves the creation of a Settlement Website by the Settlement  
28 Administrator.

1           7.     The Court appoints Garden City Group as Settlement Administrator  
2 to disseminate notice to the Settlement Class and administer the settlement. The  
3 Court orders Garden City Group to: (i) create the Settlement Website; (ii)  
4 complete dissemination of the Class Notice to the Settlement Class by October  
5 22, 2014; (iii) file proof of the dissemination of the Class Notice to the  
6 Settlement Class at least fourteen (14) days before the Final Approval Hearing;  
7 (iv) establish a post office box in Garden City Group's name to be used for  
8 receiving opt-out requests, objections, notices of intention to appear, and any  
9 other communications from Settlement Class Members; (v) promptly furnish  
10 Class Counsel, Defense Counsel, and Defendant with copies of any and all opt-  
11 out requests, objections, notices of intention to appear, or other communications  
12 from Settlement Class Members that come into its possession; and (vi) provide  
13 the Opt-Out List to Class Counsel and Defense Counsel no later than December  
14 16, 2014 and file a declaration with the Court at least fourteen (14) days before  
15 the Final Approval Hearing attesting to the completeness and accuracy thereof.

16           8.     The Court orders the Settlement Administrator to provide a list of  
17 objectors to Class Counsel and Defense Counsel no later than seven (7) business  
18 days after the completion of the forty-five (45) day period in which Settlement  
19 Class Members may object to the settlement, and then file a declaration with the  
20 Court at least fourteen (14) days before the Final Approval Hearing attesting to  
21 the completeness and accuracy thereof and attaching a copy of all objections  
22 received. The Settlement Administrator shall redact all information that is  
23 required to be redacted by this Court's Local Rules and General Orders.

24           9.     The Court sets a Final Approval Hearing on January 12, 2015 at  
25 1:30 p.m. to consider the fairness, reasonableness, and adequacy of the proposed  
26 settlement and Agreement and determine whether it should finally be approved  
27 by the Court. At that time, the Court will hear any applications for attorneys'  
28 fees, expenses, and/or incentive awards.

1           10. The Court sets December 15, 2014 as the deadline for filing the  
2 final approval motion and the application for the Attorneys' Fee Award.

3           11. The Court sets December 8, 2014 as the deadline by which  
4 Settlement Class Members must submit any: (i) request for exclusion from the  
5 Settlement Class; or (ii) objection to the Agreement, the proposed settlement, or  
6 to the Attorneys' Fee Award. The procedures and requirements for opting out of  
7 the Settlement Class or objecting to the Agreement, the proposed settlement, or  
8 to the Attorneys' Fee Award are set forth below.

9           12. The Court sets December 29, 2014 as the deadline for filing any  
10 reply memorandum in further support of final approval of the proposed  
11 settlement or the Attorneys' Fee Award application.

12           13. The Court orders that any Settlement Class Member who wishes to  
13 exclude him/herself from the Settlement Class may either submit an online Opt-  
14 Out Form electronically through the Settlement Website or print and mail the  
15 online form to the Settlement Administrator by December 8, 2014. Any  
16 Settlement Class Member who does not submit a timely written request for  
17 exclusion from the Settlement Class will be bound by all proceedings, orders,  
18 and judgments in the Lawsuit, even if such Settlement Class Member has  
19 previously initiated or subsequently initiates individual litigation or other  
20 proceedings encompassed by the Release.

21           14. The Court orders that any Settlement Class Member who becomes  
22 an Opt-Out may rejoin the Settlement Class by providing written notice to the  
23 Settlement Administrator no later than fourteen (14) days after the Final  
24 Approval Hearing.

25           15. The Court orders that any Settlement Class Member who does not  
26 exclude him/herself from the Settlement Class and who wishes to object to the  
27 fairness, reasonableness, or adequacy of the Agreement, the proposed settlement,  
28 or to the Attorneys' Fee Award must serve on the Settlement Administrator no

1 later than December 8, 2014 a statement of the objections signed by the  
2 Settlement Class Member. The objection shall be in writing, signed by the  
3 Settlement Class Member, and shall contain all of the following information: (i)  
4 the objector's full name, address, email, and mobile telephone number; (ii) a  
5 written statement of all grounds for the objections accompanied by any legal  
6 support for such objections; (iii) copies of any papers, briefs, or other documents  
7 upon which the objection is based; (iv) a written statement as to whether the  
8 objector intends to appear at the Final Approval Hearing; (v) a declaration setting  
9 forth any other objections submitted by the objector, or the objector's counsel, to  
10 any class action settlement submitted in any court, whether state, federal or  
11 otherwise, in the United States in the previous five (5) years; and (vi) if the  
12 objector intends to appear at the Final Approval Hearing through counsel, the  
13 objection must also identify the attorney(s) representing the objector who will  
14 appear at the Final Approval Hearing. Any Settlement Class Member who does  
15 not submit a timely written objection in accordance with the procedures stated  
16 herein shall be foreclosed from seeking any adjudication or review of this  
17 settlement by appeal or otherwise.

18 16. The Court orders that any Settlement Class Member, who submits a  
19 written objection and who intends to make an appearance at the Final Approval  
20 Hearing, provide to the Settlement Administrator the written objection as well as  
21 a notice of intention to appear at the Final Approval Hearing no later than thirty  
22 (30) days before the Final Approval Hearing.

23 17. The Court orders that any attorney hired by a Settlement Class  
24 Member will be at the Settlement Class Member's sole expense for the purpose  
25 of objecting to this Agreement, to the proposed settlement, or to the Attorneys'  
26 Fee Award and such attorney shall provide to the Settlement Administrator the  
27 written objection by the deadline specified in paragraph 15 above as well as a  
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1 notice of intention to appear at the Final Approval Hearing no later than thirty  
2 (30) days before the Final Approval Hearing.

3 18. The Settlement Administrator shall provide copies of any written  
4 objections and notices of intention to appear to Class Counsel and Defense  
5 Counsel and shall then file the objections and notices of intention to appear with  
6 the Court at last fourteen (14) days before the Final Approval Hearing. The  
7 Settlement Administrator shall redact all information that is required to be  
8 redacted by this Court's Local Rules and General Orders.

9 19. The Court orders that (i) the submission of an objection allows  
10 Class Counsel or Defendant's Counsel to notice the deposition of the objector  
11 consistent with the Federal Rules of Civil Procedure at an agreed-upon location  
12 and to seek any documentary evidence or tangible items that are relevant to the  
13 objection; (ii) the failure by an objector to make himself or herself available for  
14 deposition or to comply with expedited discovery requests may result in the  
15 Court striking the objector's objection and denying that person the opportunity to  
16 make an objection or to be heard; and (iii) the Court may tax the costs of any  
17 such discovery to the objector or the objector's counsel should the Court  
18 determine that the objection is frivolous and/or made for an improper purpose.

19 20. The Court preliminarily enjoins all Settlement Class Members  
20 unless and until they have timely excluded themselves from the Settlement Class  
21 from: (i) filing, commencing, prosecuting, intervening in or participating as a  
22 plaintiff, claimant or class member in any other lawsuit or administrative,  
23 regulatory, arbitration or other proceeding against Defendant in any jurisdiction  
24 based on, relating to or arising out of the claims and causes of action or the facts  
25 and circumstances giving rise to the Lawsuit and/or the Released Claims; or (ii)  
26 filing, commencing or prosecuting a lawsuit or administrative, regulatory,  
27 arbitration or other proceeding against Defendant as a class action on behalf of  
28 any Settlement Class Members who have not timely excluded themselves

1 (including by seeking to amend a pending complaint to include class allegations  
2 or seeking class certification in a pending action), based on, relating to or arising  
3 out of the claims and causes of action or the facts and circumstances giving rise  
4 to the Lawsuit and/or the Released Claims.

5 **IT IS SO ORDERED.**

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7 Dated: 9/16/14

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Honorable Dale S. Fischer  
9 United States District Judge  
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